



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/172433

PRELIMINARY RECITALS

Pursuant to a petition filed March 01, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services - WI Rapids in regard to FoodShare benefits (FS), a hearing was held on March 23, 2016, at Medford, Wisconsin.

The issue for determination is whether a systematic monthly withdrawal the petitioner makes from a variable annuity counts as income when determining her FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Wood County Human Services - WI Rapids
220 Third Avenue South
Suite 4
Wisconsin Rapids, WI 54495

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Taylor County.
2. The petitioner has received FoodShare since 2014.
3. The petitioner has a variable annuity from which she has been withdrawing \$184.20 every month.

4. The county agency notified the petitioner on January 26, 2016, that beginning February 1, 2016, it would count her systematic withdrawal from annuity as income when determining her FoodShare allotment.

DISCUSSION

FoodShare benefits depend upon household size and net income. The county agency reduced the petitioner's FoodShare allotment because it now considers a \$184.20 withdrawal she makes from a variable annuity unearned income. A household's income includes all income from any source unless paragraph (c) excludes it. 7 CFR § 273.9(b). According to 7 CFR § 273.9(c)(19)(vii), annuities are considered income.

The petitioner contends that her annuity should not count toward her income because it is set up so she can withdraw any amount—or nothing—each month. I cannot tell what the terms of her annuity are because neither party included it as an exhibit. But according to the United States Security and Exchange Commission, a variable annuity involves a contract with an insurance company in which the purchaser makes either a lump-sum payment or a series of payments and receives periodic payments immediately or on some later date. Those payments can continue for a definite period, such as 20 years, or an indefinite period, such as the purchaser's lifetime. <https://www.sec.gov/answers/varann.htm>.

It may be that the petitioner is no longer receiving payments on the annuity, but without documentation, I cannot tell if this is true. I am going to rely on the federal administrative code provision indicating that annuities are income. But if she is not receiving a steady stream of income, I suggest, as I stated at the hearing, that she withdraw only what she needs each month rather than a set monthly amount.

CONCLUSIONS OF LAW

The county agency correctly counted money from the petitioner's annuity as income when determining her FoodShare benefits.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of April, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 18, 2016.

Wood County Human Services - WI Rapids
Division of Health Care Access and Accountability